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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 12, 1994

Rosalind K. Allen, Chief
Land Mobile and Microwave Division
Private Radio Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 5202, Stop Code 1700A1
Washington, D.C. 20554

Re: Request for Clarification of Disclosure Requirements
under Section 24.813 of the Commission's Rules, 47 C.F.R.
§24.813, PP Docket No. 93-253

Dear Ms. Allen:

We request clarification of the disclosure requirements set forth in Section 24.813 of the Commission's Rules, 47 C.F.R. §24.813, which sets forth the information that must be included in an exhibit to each Form 175 application for a broadband Personal Communications Service ("PCS") license. In particular, Section 24.813(a)(1) requires that each application include:

A list of any business five percent or more of whose stock, warrants, options or debt securities are owned by the applicant or an officer, director, stockholder or key management personnel of the applicant.

47 C.F.R. §24.813(a)(1) (emphasis added). Any stockholder in a PCS applicant (with no threshold interest) must list any business (not limited to Commercial Mobile Radio Service (CMRS)). Similarly, Section 24.813(a)(2) provides that each applicant include:

A list of any party which holds a five percent or more interest in the applicant, or any entity in which a five percent or more interest is held by another party which holds a five percent or more interest in the applicant (e.g., If Company A owns 5% of Company B (the applicant) and 5% of Company C, then Companies A and C must be listed on Company B's application).

47 C.F.R. §24.813(a)(2). Thus, each holder of a 5% interest in applicant must list all entities in which it has a 5% interest,

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regardless of whether the business is a CMRS licensee or applicant. Accordingly, the rule on its face would impose enormous reporting burdens on a PCS applicant, without in any way promoting the Commission's objectives. We therefore request that the rule be clarified to specify (i) that only shareholders with attributable interests (i.e., any 5% or any controlling interest) must disclose their 5% business interests and (ii) that the 5% business interests disclosable pursuant to Sections 24.813(a)(1) and (a)(2) of the rules be limited to such businesses that are engaged in CMRS.

The purpose of Rule 24.813 is to elicit ownership information about the applicant so that the Commission can determine the real party in interest and the eligibility of the applicant.^{1/} All information requested should have some relationship to this overriding purpose. Because cross-ownership rules in the PCS context address overlaps of attributable interests in cellular, SMR and other PCS licensees, permittees or applicants, the proper focus of the ownership information required by Section 24.813 should be limited to CMRS interests. Accordingly, the explicit limitation set forth in Section 22.13(a)(1) of the rules that the ownership information be limited to Public Mobile Service providers should be read into Section 24.813, so that disclosure of subsidiaries and affiliates be limited to parties engaged in CMRS.^{2/} Similarly, because only controlling interests or non-controlling interests of

^{1/} The focus of Section 24.813 is confirmed by the decisions relating to Section 22.13 of the rules, which applies to the cellular service and on which Section 24.813 was clearly modeled. The Commission confirmed:

The real party in interest provisions were adopted to prevent an applicant from filing numerous applications in the same geographic area under different names. Thus, the entities required by these provisions [Sections 22.13(a)(1)(A)-(C)] to be listed are only those entities which have financial interests in PMRS licensees permittees or applicants.

Real Party in Interest Disclosure Requirements in the Public Mobile Radio Service, 55 RR 2d (P&F) 1053, 1053 (1982).

^{2/} In the auctions for PCS Blocks C and F, there is obviously a purpose in soliciting ownership information going beyond CMRS interests to determine compliance with the rules governing basic eligibility and small business and designated entity status. However, even in that context, no regulatory purpose is served by probing into non-CMRS affiliations, where the holder of such interests has no attributable interest in the applicant.

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5 percent or greater in a PCS applicant will be attributable to the person or entity that holds them, no regulatory purpose is served by probing into the ownership interests of holders of less than a 5 percent interest. Accordingly, the term "stockholder" in Section 24.813(a)(1) should be interpreted to mean "stockholder with an attributable interest in applicant."

These clarifications are particularly apposite to the case at hand. The Commission has repeatedly confirmed the benefits of adopting PCS rules that will result in a "faster, less burdensome licensing process."^{3/} Soliciting information that has no bearing on the purpose of the disclosure only serves to undermine the intended simplicity and efficiency of the filing and processing of PCS applications.^{4/}

For the above reasons, we respectfully request that the Commission clarify Section 24.813 of the rules by specifying that (i) "shareholders" in Subsection (a)(1) be read to refer to a "shareholder with an attributable interest in applicant" and (ii) that the disclosures as to subsidiaries and affiliates in subsections (a)(1) and (a)(2) be read to be limited to "such parties as are a CMRS licensee, permittee or applicant." Because

^{3/} Memorandum Opinion and Order: Amendment of the Commission's Rules to Establish New Personal Communications Services, FCC 94-144, GEN Docket No. 90-314, Para. 113 (rel. June 13, 1994). In that Order, the Commission extolled the benefits of the clear, simple and easily administered 5 percent/20 percent bright line attribution thresholds. Soliciting information on the application that probes all affiliations between cellular and PCS licensees in the same market - or for that matter, interests that have no bearing on CMRS - defeats the benefits of the Commission's bright line thresholds.

^{4/} Overly exacting disclosure requirements would also serve as a trap to render ineligible even the best intentioned and most qualified applicants. The Commission has confirmed that:

Failure to submit the ownership information required by Section 24.813 of the Commission's rules cannot be corrected and will cause the applicant to be dismissed and the applicant will be rendered ineligible to participate in the auction.

Commercial Mobile Radio Service Information: Auction Notice and Filing Requirements for 99 MTS Licenses Located on the A and B Blocks for Personal Communications Services in the 2 GHz Band, Rep. No. AUC-94-04, Auction No. 4 (Sept. 19, 1994) at 7 para. 4.

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the Forms 175 for Blocks A and B must be received by the Commission no later than 5:30 p.m. ET on Friday, October 28, 1994, we request prompt action on this letter. Two copies of this letter are provided. Kindly make this letter part of the public record in the above-referenced docket.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Louis Gurman", with a long, sweeping horizontal flourish extending to the right.

Louis Gurman

cc: John Cimko, Jr., Chief, MSD
Donald H. Gips, Deputy Chief, OPP
Robert M. Pepper, Chief, OPP
Jonathan V. Cohen, Esquire
Mr. Gregg Rosston
Michael Wack, Esquire